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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,046	06/23/2003	David A. Young	MDYNE/D040CT	1873

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EXAMINER

MAI, TRIM

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,046

Applicant(s)

YOUNG ET AL.

Examiner

Tri M. Mai

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 9-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 14-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Newly submitted claims 9-13 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 9-13, drawn to a shank, classified in class 403, subclass 377.

The inventions in claims 1-8, and 14-19 and the invention in claims 14-18 are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination requires the specificities of the accessory carrier element being selectively engageable with either the first segment or the second segment. Furthermore, the subcombination has separate utility such as a joint.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 9-13 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first segment being angle at either an acute angle or a right angle (note that acute angle is angle being greater than zero, not at zero degrees), all of the accessories in claim 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. Claims 3, 4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not teach the first segment being at either an acute angle or a right angle. This is a new matter rejection.

Furthermore, it is unclear how the accessory being mounted at the specific angle at 90 degrees.

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4. Claims 1-8, 14, 16, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Powell (6129371). Powell teaches an accessory carrier assembly having a first segment 12 having a first aperture, a second segment 14 being fitted on the first aperture, an accessory carrier element 26, 38. With respect to the accessory being selectively **engageable** with either the first segment or the second segment. It is submitted that this limitation is an intended use. The accessory carrier including the two plates can be engaged at either the two ends as claimed.

Furthermore, the recitation “either the first segment or the second segment” requires only one position to be met, and Powell meets one of the two positions as claimed.

Regarding claims 3 and 4, with respect to the the recitation “either an acute angle or a right angle”, the claim requires only one position to be met, and Powell meets one of the two positions as claimed.

5. Claims 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powell in view of either Eckhart (5449100) or Julian (5593139). To the degree it is argued that the first and second portions are not welded. Eckhart teaches that it is known in the art to provide two portions welded together (col. 6, ln. 61). Julian teaches that it is known in the art to weld the two parts together at 18. It would have been obvious to one of ordinary skill in the art to weld the two parts together to provide an alternative attachment means.

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6. Claims 1-8, 14, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Duvernay et al. (5695103). Duvernay teaches an accessory carrier having carrier assembly having a shank with a first segment 12, a second segment 37, and an accessory carrier element engageable with second element.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Duvernay or Powell in view of either Burns (5685686) or Hatteburg (2570802). Burns teaches that it is known in the art to provide an attachment utilizing a pair of bushing as shown in Fig. 8.

Hatteburg teaches that it is known in the art to provide a pair of bushings as shown in fig. 8. It would have been obvious to one of ordinary skill in the art to provide a pair of bushing in Duvernay or Powell as taught by either Burns or Hatteburg to provide an alternative attachment.

8. Applicant's arguments have been fully considered but they are not persuasive. Applicant asserts that Powell does not disclose a first segment capable of engaging a first hitch element and a second segment capable of engaging a second hitch element as required in Applicants' claim 1.

It is noted that the term "capable" signify an intended use. It is submitted that the portions 29 and 31 is capable of intended use, i.e., portions 29 and 31 to be disconnected and capable of engaging portion 14 as claimed. Furthermore, portion 18 is capable of being mounted to a second vehicle with a different hitch element as claimed. Furthermore, the claim only set forth one configuration of the device in use. In that case, either Duvernay or Powell meets one of the configurations as claimed.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).


Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai 
Primary Examiner
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